ONG CHOI HUAT & ANOR.

v.

ONG CHU KU & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[ORIGINATING SUMMONS NO. 31-592 OF 1985]
14 OCTOBER 1986

LAND LAW: *Claim by plaintiffs for return of 2 title deeds - Plaintiffs are registered proprietors of these two pieces of land - No written declaration of trust executed - Defendants seeking a declaration that they are beneficially entitled to these properties - Whether any order can be made in the circumstances.*

This is a claim by the plaintiffs for the return of 2 title deeds from the defendants. The plaintiffs are the registered proprietors of these two pieces of land and the defendants claimed that they have equal shares in the land. It was agreed that each plaintiff would have a quarter interest in the land. The measure of the trust of the parties in each other was such that no written declaration of trust was executed. The plaintiffs did not dispute that at the time the properties were purchased the defendants were lawfully in possession of the title deeds now claimed by them but they are entitled to call upon the defendants to return the title deeds to them by the mere fact that they are registered as proprietors on the title deeds.

Held:

[1] The plaintiffs are the registered proprietors and the defendants' right to the lands, if it is held that they are beneficially entitled thereto, is no less than the claim of the plaintiffs.

[2] In the circumstances, the Court is of the view that it cannot make any order in the circumstances until the suits filed have been tried and the disputed questions have been adjudicated upon.

[Application dismissed with costs to be taxed and paid by defendants to plaintiffs.]

For the plaintiffs - C.K. Tam; M/s.C.K. Tam & Co.
For the defendants - B.T. Lee; M/s.Lee & Cheah

JUDGMENT

Mahadev Shankar J:

This is a claim for the return of 2 title deeds.

On 13 March 1965 Ong Choi Huat the first plaintiff was registered as the proprietor of all that land comprised in EMR 905 Lot 1919 Mukim of Jeram Batu, district of Pontian. The same day Wong See An the second plaintiff was registered as the proprietor of all the land comprised in EMR 864 Lot 1920 Mukim of Jeram Batu, district of Pontian. The plaintiffs continued to remain registered proprietors of these two pieces of land to this day.

The title deeds are in the possession of the defendants. The plaintiffs say that they asked the defendants many times for the return of the title deeds but the defendants refused so to do.

They therefore initiated these proceedings by way of originating summons on 1 September 1985.

The defendants are resisting this application. Their claim is that the land in question was purchased by the plaintiffs and the defendants in equal share. At the time of the purchase it was agreed that each plaintiff would only have a quarter interest in the land registered in each of their name. Each of the other party to this application was also by agreement entitled to a quarter interest. The measure of the trust of the parties in each other was such that no written declaration of trust was executed. However the defendants' contention is supported not only by affidavit affirmed by them but also by an affidavit by the mother of the parties and the sister and the solicitor who acted in that purchase of the properties at the time.

To put it in a nutshell, the plaintiffs do not dispute that at the time the properties were purchased the defendants were lawfully in possession of the title deeds now claimed by them.

But what they are saying is that since then they are entitled to call upon the defendants to return the title deeds to them by the mere fact that they are registered as proprietors on the title deeds.

The submission to the Court is that such an order should be made regardless of the claims of the defendants that they are beneficially entitled to the land and that they are lawfully in possession of the title deeds.

What is more each of the defendants have filed a writ of summons in this High Court claiming for a declaration of their beneficial entitlement in these properties. These actions will be consolidated and in due course will come up for trial.

The plaintiffs submit that the defendants can equally well protect their interests in the lands by lodging a caveat or alternatively by obtaining an Injunction in the actions. The title deeds however, they say, must be ordered to be returned to them immediately.

With respect, I am unable to agree. No doubt the plaintiffs are the registered proprietors. But the defendants are making a serious and substantial claim as to why they are entitled to hold on to the tittle deeds. Their right to the lands, if it is held that they are beneficially entitled thereto, is no less than the claim of the plaintiffs.

In these circumstances, this Court is of the view that it cannot make any order in the circumstances until the Suits filed have been tried and the disputed questions have been adjudicated upon.

Consequently I dismissed this application with costs to be taxed and paid by the defendants to the plaintiffs.

My order was initially made in chambers on 19 May 1986. On that occasion I reserved costs and directed that they be dealt with at the trial of the actions filed by the defendants.

However the plaintiffs applied for further argument which was heard on 7 October 1986. At the end of submissions by the plaintiffs' Counsel I remained unconvinced and confirmed that the application should stand dismissed. As I was of the view that the further argument in this matter was without merit I made an order that the costs of the day be taxed and paid by the plaintiffs to the defendants.

One other point which arises is that since my order of 19 May 1986 the plaintiffs sought to put in two further affidavits. Defence Counsel objected to these being admitted and I upheld the objection. Since the Court had already made an order and the application was for further argument I consider that these affidavits could not properly be taken into account in deciding whether my earlier order had been properly made.

On application of the plaintiffs leave was given to appeal to the Supreme Court if the plaintiffs were so inclined.

Also found at [1987] 2 CLJ 328